

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5330 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

OIL & NATURAL GAS COMMISSION EMPLOYEES MAZDOOR SABHA

Versus

OIL & NATURAL GAS COMMISSION & ORS.

Appearance:

MR NR SHAHANI for Petitioner

MR RAJNI H MEHTA for Respondents No.1 to 4

MR SHAILESH BRAHMBHATT for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/03/97

ORAL JUDGEMENT

1. This Special Civil Application has been filed by the Oil & Natural Gas Commission Employees Mazdoor Sabha, through its Branch Secretary at its office at Baroda, in the service matter. The prayer has been made by the petitioner-union in this Special Civil application for the directions to the respondents No.1 to 4 to regularise all the promotions in the post of Accounts Assistant Gr.I

by giving deemed dates and proper placement in the seniority list to all the Accounts Assistant Gr. II, who are senior to the respondents No.5 to 15 and to prepare a seniority list of Accounts Assistant Gr. I on that basis. The further consequential reliefs have also been prayed for.

2. So the grievance pertains to the promotions and the seniority of the persons who are in the category of the Accounts Assistant Gr.II. The dispute relates to promotions on the post of Accounts Assistant Gr.I. In the service jurisprudence, it is settled law that it is for the aggrieved person i.e. the non-appointee to assail the legality of the offending action. None of the persons aggrieved of non-promotion and seniority has made any grievance in this Special Civil Application and the petition has been filed by a Mazdoor Sabha. None of the legal and fundamental rights of the petitioner, Mazdoor Sabha, alleged to have been infringed. Under Article 226 of the Constitution, this Court can only take care of the infringement of any legal or fundamental right of the employee/officer. It is true that the Mazdoor Sabha can have a collective bargain with the employers in the matter of the grievances of its members other than pertaining to dismissal, removal or termination from services. It can have a remedy for redressal of the grievances, but not by way of a writ petition before this Court, but elsewhere. In case the petitioner felt that some injustice has been done or caused to its members then the only course open to it was to raise an industrial dispute and not to approach this Court by way of filing this writ petition under Article 226 of the Constitution, where only individual legal and fundamental right of the employee/officer could have been enforced. Be that as it may. This petition has been filed in the year 1984.

3. Today I have decided another writ petition, being Sp. Civil Application No.5217/83 which has been filed by the respondents No.5 to 15 herein. There was also the dispute between the respondents No.5 to 15 herein and the respondents (Sub Head (Accounts)) therein regarding promotion and seniority.

4. The counsel for the respondent-Commission, Shri. R.H. Mehta has brought following facts to the notice of this Court.

(1) The respondents No.5 and 9 are working on ex-cadre post. They are not in the Finance & Accounts Division of the Commission. The

respondents No.6, 7 and 8 have retired from the Commission services on 31-3-1995, 31-3-1995 and 31-1-1996 respectively.

(2) The respondents No.6, 7 and 8 before their retirement got three promotions. The respondent No.10, namely, R.G. Doshi has already got three promotions. The rest of the respondents got further two promotions.

5. The counsel for the petitioner does not dispute the aforesaid facts which have been stated by the counsel for the Commission. The subsequent events which have taken place during the pendency of this Special Civil Application have not been brought to the notice of this Court. In the service matters, after passing of the time many subsequent developments take place and the grievances with which the persons come before this Court may not survive or the grievances only survive to certain extent. Only in exceptional cases all of the grievances may still survive after passing of the time. This Court in many of the cases earlier observed that in service matters it is utmost important and the petitioners' owe a duty to the Court to disclose all the subsequent developments taking place and to give out in the concise form what grievance of the petitioners now survive. However, my experience goes that none of the advocates of in this Court has taken note of those decisions. Though the petitioners may not have any instructions in the matter still they press for the decisions on merits of the matter though in that matter nothing would have survived or by passing of the time no grievances whatsoever of the petitioner may remain therein. The petitioner has not produced anything on the record pertaining to the subsequent developments which have taken place and affirmatively to state whether any grievance still survives or not. The petitioner is a Mazdoor Sabha, a body, and it owes more duty and obligation in this regard to the Court. Be that as it may.

6. The promotions of the respondents have been made in the category of the Accounts Assistant Gr. I in the month of June, 1980 and those promotions have been challenged by the petitioner by filing of this special Civil Application before this Court on 18th October, 1984 i.e. after more than about four years and four months. In the dispute of the service matters, the delay of about four years and four months is a gross delay. The petitioner has not given any explanation good, bad or indifferent whatsoever for this delay in filing of this

Special Civil Application. The petitioner in this Special Civil Application at one place has stated that against these promotions, Mr. Y.K. Vora made an application, but Shri Y.K. Vora has not filed this Special Civil Application. The petitioner has also filed representation, as per its case, on 23rd December, 1983. That representation has been filed by the petitioner after more than three and half years and about one year thereafter this petition has been filed. The delay in filing of this petition coupled with the fact that the petitioner has not challenged the subsequent promotions given to the respondents to the next higher post, in the case of some of the respondents, three promotions, and in the case of other respondents, two promotions, two respondents i.e. the respondents No.5 and 9 work on ex-cadre post, and the petitioner is a union, none of the legal and fundamental rights of the petitioner have been infringed. I do not find it to be a fit case where any interference should be made. The petitioner has permitted the respondents to get their rights crystallized and on the basis of the promotions which have been given to them in the month of June, 1980, they got the seniority in the cadre of Accounts Assistant Gr.I and on the basis of the seniority they have further been promoted.

7. After about 17 years of the promotions, I do not consider it in the larger interest that any interference should be made and the settled position should be disturbed even if some grievance of the members of the petitioner survive.

8. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

zgs/-